

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
COXCOM, Inc. d/b/a/Cox Communications)	
Oklahoma City and Cox Communications Tulsa)	CSR-8059-E
)	CSR-8060-E
Petition for Determination of Effective)	
Competition in Various Oklahoma Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: May 13, 2010

Released: May 13, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. COXCOM, Inc., hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPDs”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Group B Communities by purchasing a subscriber

⁶47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petition at 6 & Exhibit 3.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petition at 4.

¹²*See* Petition at Exhibit 2.

¹³*See id.* at 5.

¹⁴*Id.* at 8.

tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code plus four basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by COXCOM, Inc. **IS GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

¹⁵*Id.*

¹⁶*Id.* at 9.

¹⁷47 U.S.C. § 543(l)(1)(A).

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

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COMMUNITIES SERVED BY COXCOM, Inc.

Communities	CUID(s)
Bixby	OK0202
Broken Arrow	OK0065
Catoosa	OK 0283
Coweta	OK0185
Glenpool	OK0193
Jenks	OK0195
Kiefer	OK0223
Owasso	OK0188
Sand Springs	OK0064
Sapulpa	OK0194
Rogers County	OK0293
Osage County	OK0391
Creek County	OK0222
Wagoner County	OK0294
Lake Aluma	OK0770
Valley Brook	OK0179
Canadian County	OK0774
Cleveland County	OK0694
Logan County	OK0358
Oklahoma County	OK 0693
Tulsa County	OK0292

ATTACHMENT B

CSR-8059-E

COMMUNITIES SERVED BY COXCOM, Inc.

Communities	CUID(s)	CPR*	2000 Census Households	Estimated DBS Subscribers
Bixby	OK0202	15.2865%	4903	749.50
Broken Arrow	OK0065	25.4889%	26159	6667.65
Catoosa	OK 0283	30.2125%	1972	595.79
Coweta	OK0185	44.4890%	2582	1148.71
Glenpool	OK0193	31.9072%	2761	880.96
Jenks	OK0195	30.5109%	3451	1052.93
Kiefer	OK0223	32.5364%	373	121.36
Owasso	OK0188	45.7170%	6595	3015.03
Sand Springs	OK0064	21.3245%	6564	1399.74
Sapulpa	OK0194	30.4351%	7430	2261.33
Wagoner County	OK0294	43.3126%	11700	5067.58
Lake Aluma	OK0770	26.9447%	40	10.78
Valley Brook	OK0179	16.5630%	298	49.36
Canadian County	OK0774	35.2211%	1888	664.97
Oklahoma County	OK 0693	41.9332%	4711	975.47

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR-8060-E

COMMUNITIES SERVED BY COXCOM, Inc.

Communities	CUID(s)	Franchise Area Households	Cable Subscribers	Penetration Percentage
Cleveland County	OK0694	3307	12	0.36%
Logan County	OK0358	7232	2106	29.12%
Rogers County	OK0293	15997	3099	19.37%
Osage County	OK0391	8195	259	3.16%
Creek County	OK0222	12139	1670	13.76%
Tulsa County	OK0292	12864	3606	28.03%